IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2709 OF 2005

Ashok Bhika Kakulte. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri Sachin V.Dhakephalkar for the Applicant.

Ms.R.M.Gadvi, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 27th June, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned A.P.P. appearing for the State.

2. The Applicant is being prosecuted for offence under section 498A, 506, 109B, 323, and 34 of the Indian Penal Code along with the other Accused. The application made by the Applicant along with the other accused to this Court was disposed of by order dated 24th August 2004. In the said order it is noted that in so far as the present Applicant is concerned, the application was not pressed with liberty to apply for bail afresh before the Sessions Court as and when report of the viscera and opinion as to the cause of death is received. This liberty was sought as defence of the Applicant was that his deceased wife committed suicide by consuming poison. After the report of the Chemical Analyser was received and after determination of cause of death of the

deceased, fresh Application was made by the Applicant to the Sessions Court which has been rejected.

3. The learned Advocate for the Applicant invited my attention to the statement of Nilesh, the son of the Applicant. He submitted that except for general allegation made by Nilesh against the Applicant, there were no specific allegation made by Nilesh against the Applicant. He submitted that the statement of Nilesh is not sufficient to establish complicity of the Applicant.

4. The learned A.P.P. has opposed the application by relying upon the order passed by the learned Sessions Judge.

5. I have considered the submissions. In the statement of Nilesh, who is the son of the Applicant, he has described the frequent assaults by the Applicant on his deceased mother. He has also described in detail the assault made by the Applicant on the deceased on the date of the incident. He has narrated that his sister unsuccessfully tried to intervene and in the bargain suffered several injuries. He has stated that the deceased became unconscious.

6. At this stage the case made out by the Applicant regarding the alleged suicide by the deceased will have to be ruled out as report of the Chemical Analyser shows

that the viscera does not reveal any poison. Moreover the post mortem note shows that there were injuries on the person of the deceased.

7. The Applicant was granted liberty to apply after receipt of the report of the chemical analyser. The said report does not support the case of the Applicant as regards the case of suicide. The statement of the Applicant's son at this stage is sufficient to show complicity of the Applicant. I find no reason to differ from the view taken by the learned Additional Sessions Judge. Accordingly the Application is rejected.

Judge.